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VANCOUVER POLICE DEPARTMENT

# PUBLIC DEMONSTRATION GUIDELINES

July, 2012

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## **Objective**

Maintaining the public peace is a critical police function. It is, however, oftentimes an area that proves to be challenging as police must balance discretion and the public's expectations in policing public order events. The purpose of these Public Demonstration Guidelines is to provide some general information on how the Vancouver Police Department (VPD) manages public demonstrations.

The VPD manages approximately 250 to 300 public gatherings a year. These range from large planned congregations such as Celebration of Light, to gatherings which ultimately become demonstrations such as Occupy Vancouver or Critical Mass. While the vast majority of these events end peacefully and with minimal disruption to the public, some do not; these are characterized as "high risk" demonstrations. These high risk demonstrations may result in consequences such as an arrest, which in fact demonstrators are willing to accept in order to convey their message. The purposes of these Public Demonstration Guidelines, although governing all public gatherings policed by the VPD, specifically apply to the way in which we police high risk demonstrations.

## **General Guidelines**

In 2002, the VPD began to implement significant changes to how it responds to large crowds. The changes included new tactics, restructuring of the Crowd Control Unit and the coordination of critical resources within the Department.

As a result of the changes and coordination of VPD resources, the Public Order Group (POG) was formed and includes the Mounted Squad, Dog Squad, bicycle-trained members, Negotiators and the Public Safety Unit (PSU – formerly known as the Crowd Control Unit). All members of the POG have received specialized training in crowd control and management. The POG normally polices all large scale public gatherings such as Celebration of Light, but these guidelines have particular relevance in the POG's policing of high risk demonstrations.

A primary function of the VPD is to uphold the law, and all of the VPD's policies and practices that guide its actions flow from relevant statutes and case law. The VPD recognizes the public's right to lawfully protest, and that at times the rights of protestors will collide with the rights of others and so discretion in enforcing the law is necessary and desirable. And because the law and circumstances evolves, so too have the guidelines that dictate the way in which the VPD deals with public order events evolved over time.

As described above, the VPD's approach to policing public order events is well supported in law. The *Canadian Charter of Rights and Freedoms* in S. 2 sets out the fundamental freedoms, including freedom of peaceful assembly. The *Charter* is the highest law in Canada. As such, all federal and provincial statutes, as well as municipal by-laws, must be consistent with the *Charter*. There is a long-standing recognition by the Courts that the use of police discretion in consideration of the proportionality to the material circumstances is entirely appropriate. Further, the VPD, along with many other police agencies, polices public order events involving aboriginal issues, which often involve competing rights. When policing such events, while the VPD is mindful of S. 2 of the *Charter*, the VPD is also mindful of S. 25, which states that certain aboriginal rights and freedoms are not limited by other *Charter* rights.

## **Public Demonstration Guiding Principles**

It is a dilemma for the police in that they often must exercise proper police discretion when policing large events. While the *Charter* enshrines the public's right to lawful assembly, there is often a tension between that right and other statutory laws such as the Provincial Motor Vehicle Act and the City of Vancouver Street and Traffic By-law. This tension ultimately leads to police having to make difficult and carefully thought out decisions in this area. For example, to engage in enforcement action against every cyclist during Critical Mass would cause the ride to become significantly longer and would exponentially disrupt traffic. This would have the added effect of increasing tension between the cyclists and motorists as the ride becomes longer because of police enforcement action. This may lead to violence that otherwise would not have occurred, put the police and public at risk, and bring criticism from the public which the VPD serves. These guidelines, therefore, are intended to help the VPD navigate through oftentimes difficult decision making processes in this area. These guidelines, further, are anchored in the VPD's guiding principles. In the Critical Mass example, hasty direct enforcement action would be at odds with the VPD's guiding mission and vision statements as laid out in its strategic plan. These are as follows:

- **Our Mission:** "The Vancouver Police Department is dedicated to being Canada's leader in innovative policing, maintaining public safety, upholding the rule of law and preventing crime."
- **Our Vision:** "To be the safest major city in Canada."

The VPD's strategic plan hinges on the VPD's values, which are integrity, professionalism, accountability and respect. These values are grounded on human rights principles that guide the VPD. These principles are:

- **Justification:** "Police actions shall be necessary, legitimate and legally justifiable."
- **Proportionality:** "The risk and impact of police actions shall be proportional to the priority and the severity of the situation in need of intervention."
- **Intrusiveness:** "Police actions should be the least intrusive required to ensure public safety."

The VPD's strategies on crowd control and policing demonstrations are in accordance with its strategic plan and the underlying principles of its mission, vision and commitment. Specifically, the use of police discretion, weighing in justification, proportionality and level of intrusiveness, leads to safer, smaller events which result in less frustrations and delays faced by the public.

When policing public demonstrations, the VPD's goals include but are not limited to:

- Preventing criminal acts from taking place.
- Ensuring that the safety of the protesters, the public, and the police is maintained.
- Ensuring that the public peace is maintained.

The VPD's policing style for crowd management often incorporates, when appropriate, a friendly yet professional approach with an emphasis on responsible celebration and lawful demonstration.

The VPD's current approach regarding crowd control and policing public demonstrations can best be described as emphasizing public safety first and foremost and using an approachable, professional style where appropriate. During fundamentally lawful demonstrations, the VPD ensures its actions do not escalate to confrontations which may lead to violence, or injuries to the public or to VPD members. The VPD uses recognized best practices in its training and preparations for policing public demonstrations. In fact, the VPD uses its discretion in allowing public gatherings which may violate the Motor Vehicle Act or municipal bylaws in other situations such as sporting or other celebrations, but may take more stringent enforcement action when such demonstrations become fundamentally unlawful. One such example would be where VPD may tolerate demonstrators occupying a busy downtown intersection for a short time to get a message conveyed, they may well step in once the demonstration became unlawful by unduly disrupting traffic.

The VPD's philosophy which dictates these guidelines are as follows:

- **Protect the public's right to freely speak and assemble.**

When officers realize that they are at the scene of a protest to permit the right of speech and assembly, it guides and shapes the law enforcement response from planning to the implementation of the plan.

- **Use restraint in the use of force. Protect people first, property second.**

There is a very real possibility, however, that force may have to be used at any large gathering.

- **Consider police officer safety when deciding on a course of action.**

We recognize there are inherent risks in policing; however, we will not place our officers in high risk situations for minor matters.

- **Police actions are grounded in the human rights principles of proportionality, lawful justification, and using the least intrusive means necessary.**

Any decision to intervene will take into consideration the impact demonstrators are having on others, and the proportionality of police intervention. While some demonstrator actions might be highly visible and annoying, these actions may not have a large impact on people working, commuting or living in the area, thereby not justifying an overt police response.

- **Practice open and frequent communication with the public and the media.**

When events are being planned, it is beneficial for the police to speak with the organizers before, during and even after that event. A cooperative communication

strategy is fundamental to not only safely policing demonstrations, but to the peaceful realization of the goals of the demonstrators. This re-enforces the VPD's role of those that permit the demonstration to peacefully proceed rather than a force to be confronted. By maintaining a dialogue, it allows for the opportunity to encourage peaceful gatherings and minimize sources of conflict.

- **Leadership in preparation and training for public order events.**

When those assigned to the event are trained to operate as a team, the crowd will be influenced by the level of professionalism demonstrated by the police. The VPD constantly studies similar events and outcomes from other cities and will strive to continuously improve its training and tactics.

- **The police are peace keepers.**

This is the primary function at any large demonstration. If an arrest must be made, or enforcement action taken, it should be directed toward individuals who threaten the peace of the event. There may be a time when a decision may have to be made to disperse a crowd to preserve peace and prevent injuries and property damage. This can best be done by officers possessing the specialized skills and equipment to disperse a crowd. It is imperative to have a philosophy that encourages the peaceful gathering of people. It is also imperative to prepare for the people and circumstances that may dynamically and suddenly turn a crowd into becoming confrontational.

### **Police Discretion**

The importance of discretion and proportionality relative to material circumstances has long been recognized by the courts as legitimate considerations for law enforcement. The fact that the police have a duty to enforce the law does not eliminate or over-ride such discretion, and a Chief Constable has considerable independence in deciding what laws to enforce, and how they will be enforced. For example, the British Columbia Criminal Justice Branch, Ministry of Attorney General, Crown Counsel Policy Manual states:

Acts of civil disobedience, including conduct involving public demonstrations, may come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations may not always be in the public interest.

Courts at several levels in Canada recognize police discretion and proportionality relative to material circumstances. The ability to use one's judgment to adapt the process of law enforcement to individual circumstances and to the real-life demands of justice is in fact the basis of police discretion. What La Forest J. said in *R. v. Beare*, [1988] 2 S.C.R. 387, at p. 410, is directly on point here:

Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid.

Thus, a police officer who has reasonable grounds to believe that an offence has been committed, or that a more thorough investigation might produce evidence that could form

the basis of a criminal charge, may exercise his or her discretion to decide not to engage the judicial process. But this discretion is not absolute. Far from having *carte blanche* in this area, police officers must justify their decisions rationally.

The VPD's approach to policing demonstrations is based on the rule of law, and is in accordance with rights enshrined in the *Charter*. These guidelines are also rooted in the guiding principles of the VPD, and are strongly influenced by balancing competing rights, and, of course, statutory and common law.

## **Conclusion**

The way in which the VPD polices public order events has proven to be successful at several large and high profile events in the recent past. Further, the guidelines which shape the way in which the VPD polices such events are consistent with the best practices of other police agencies, and flow from the rule of law. They are designed to recognize the public's right to lawful demonstration while upholding the law in a proportionate manner and with the least level of intrusiveness in doing so. As such, these guidelines are consistent with Canadian law, the VPD's Strategic Plan, and the VPD's guiding principles.